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Planning Board

DECISION

01-01

Dunham ParkDefinitive Subdivision Approval
Open Space Development Special Permit
Minor Affordable Housing Development Special Permit

April 11, 2001

Decision of the Acton Planning Board (hereinafter the Board) on the application of Bentley Building Corporation (hereinafter the Applicant) for property at 252-260 High Street, Acton, Massachusetts. Its owners are Richard L. and Lois R. Dunham of 252 High Street in Acton, and Michael A. and Carolyn S. Case of 260 High Street in Acton. The property is shown on the 2000 Acton Town Atlas map J-3 as parcels 15 and 20-1 (hereinafter the Site).

This decision is in response to an application for an Open Space Development special permit with a Minor Affordable Housing Development and for approval of a Definitive Subdivision plan entitled "Dunham Park". The application was received in the Acton Planning Department on September 7, 2000, pursuant to sections 4.2 and 4.4 of the Acton Zoning Bylaw (hereinafter the Bylaw), the Special Permit Rules and Regulations (hereinafter the Special Permit Rules), Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Subdivision Rules).

The Applicant presented the subdivision proposal and the subject matter of the special permit to the Board at a duly noticed public hearing of the Board on November 6, 2000. Mr. Chris Lorrain of Landtech Consultants, Inc. assisted the Applicant in the presentation. The hearing was continued to January 22, 2001, March 12, 2001, April 9, 2001 (without deliberation), and April 11, 2001, and then closed. Board members Ken Sghia-Hughes (Vice Chairman), Lauren S. Rosenzweig, Edwin F. Pearson, Hartley E. Millett, and associate member Gregory Niemyski were present throughout the hearing. The Chairman designated Mr. Niemyski to sit on the Board to act on the special permit applications pursuant to section 10.3.9 of the Bylaw. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 A plan entitled "Definitive Subdivision in the Town of Acton, Massachusetts, Dunham Park" dated August 18, 2000, last revised on April 2, 2001, drawn by Landtech Consultants, Inc. of Westford, MA consisting of ten sheets:
- 1.2 Supplemental items and documentation required by the Special Permit and Subdivision Rules consisting of:

- Properly executed Applications for Approval of a Definitive Plan and for an Open Space Development Special Permit with a Minor Affordable Housing Development, forms DP, OSD, and OSD-AH, dated August 30, 2000.
- Filing fee.
- A completed Development Impact Report, form DIR.
- Designer's Certificate.
- Certified abutters list.
- Applicant's statement to retain the fee in the street.
- Legal Notice of Public Hearing.
- A list of requested waivers, dated 12/29/00 and 3/14/01.
- A letter authorizing Town entry into the Site to complete the street.
- An authorizing vote of trust, corporation or company.
- Copy of the deeds.
- A list of mortgage holders.
- Drainage calculations, last revised 3/22/01, and supplemented with a worksheet plan dated 4/3/01 with spot grades for the southeast section of the site.
- All necessary statements and documents for the proposed affordable dwelling unit.

1.3 Additional information submitted by the Applicant:

- Application cover letter from Landtech, dated 8/18/00.
- Site description summaries for existing conditions, proposed development, development impacts, and development alternatives.
- Soil test logs from March and May 2000.
- Letters to Town Planner from Landtech Consultants, Inc., dated 12/29/00, 2/15/00, 2/23/01, and 3/23/01.
- Letters to Assistant Planner from Mr. White, Bentley Building Corp., dated 1/12/01, 1/16/01, 2/21/01 (2), 3/5/01, 3/8/01, 3/14/01, 3/28/01
- A draft sidewalk easement to the Town of Acton Mr. Joseph G. Garver and Mr. Paul Garver of 268 High Street.
- Water test results from the well serving the Dunham house, by Thorstensen Laboratory, Inc., dated 3/19/01.
- Lot area calculations.

1.4 Interdepartmental communication received from:

- Acton Building Commissioner, dated 9/14/00 and undated;
- Acton Community Housing Corporation (ACHC), dated 10/16/00, 1/4/01 with attached memorandum from Dan Buckley to the ACHC, dated 12/17/00, and 4/4/01;
- Acton Engineering Administrator, dated 10/16/00, 1/16/01, and 3/8/01;
- Acton Finance Director, dated 10/2/00;
- Acton Fire Chief, dated 11/1/00;
- Acton Health Director, dated 9/14/00, 11/3/00, 1/16/01, 3/9/01, and 3/27/01;
- Acton Historical Commission, dated 9/13/00, 1/9/01 and 3/14/01;
- Acton Natural Resources Director, dated 10/20/00 and 3/1/01;
- Acton Tree Warden & Municipal Properties Dir., last revised 5/5/01;
- Acton Planning Department, dated 10/27/00, 1/17/01, and 3/8/01; and
- Acton Water District, dated 9/15/00, 1/19/01, 2/26/01, and 4/2/2001.

1.5 Correspondence received from:

- Letter to the Board from Ms. Roberta King of 4 Assabet Crossing, Acton, dated 3/28/01.

1.6 Other:

- Decision 00-09 of the Board, Dunham Park preliminary subdivision approval with conditions, dated 5/22/00.
- A "Preliminary Conventional Subdivision Plan" of Dunham Park, dated 4/10/00.
- Letter from Mr. Deming, Director of the Water Supply District of Acton to Mr. Aspirino, Landtech, dated 12/4/00.
- Letter from Mr. Deming, Director of the Water Supply District of Acton to Mr. White, Bentley Building Corp., dated 3/14/01.

Exhibits 1.1 through 1.3 are referred to herein as the Plan.

2 FINDINGS and CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Site and proposed subdivision consists of the Dunham and the Case parcels.
- 2.2 The Site is located within the Residence 4 zoning district. The Dunham parcel is included in the Affordable Housing Overlay Sub-District A; the Case parcel is not.
- 2.3 The larger westerly portion of the Site towards High Street is in the Groundwater Protection District (GPD) Zone 4; the easterly rear portion is in Zone 2.
- 2.4 The Plan shows the division of +/-10.95 acres into 12 residential lots on 5.73 acres, and 4.66 acres of common land. The common land includes most of GPD Zone 2.
- 2.5 10 lots are intended for new single family dwelling unit. The two existing dwellings, one on the Dunham parcel and the other on the Case parcel are proposed to remain. They are shown on the Plan on lots 2 and 12.
- 2.6 The existing dwelling unit on the Dunham parcel, shown on lot 2 on the Plan, is proposed as an affordable unit under section 4.4.3 of the Bylaw - Minor Affordable Housing Developments. A corresponding increase of lots or dwelling units from 8 to 10 on the Dunham parcel is proposed. The Case parcel accounts for two more lots or dwellings units.
- 2.7 Under the Plan, the affordable dwelling unit would be sold to a qualified low or moderate-income household in compliance with the State of Massachusetts Local Initiative Program.
- 2.8 The proposed single family homes are allowed on the Site in accordance with the Bylaw, including all overlay district requirements. The proposed lots comply with the area and frontage requirements of the Bylaw, including all overlay district requirements and subject to an Open Space Development (OSD) Special Permit under section 4.2 of the Bylaw and a Minor Affordable Housing Development Special Permit under section 4.4 of the Bylaw.
- 2.9 The Plan shows a +/-550 foot long subdivision street, proposed Dunham Lane, on +/-0.55 acres. Dunham lane intersects with High Street. High Street is designated a collector street.
- 2.10 The Town of Acton is in the process of constructing a public sewer system along High Street. The Site is assigned five sewer betterment unit (equivalent to an allocation of five dwelling units), one for the Case parcel and four for the Dunham parcel.
- 2.11 The Plan shows a sewer connection for all lots. However, it is unclear at this time if or how more than five lots can be tied into the system when it becomes available in or about the fall of 2001. The Board of Health finds adequate capacity for on-site septic systems.
- 2.12 The Plan shows no sidewalk on proposed Dunham Lane. Instead, the Plan shows a sidewalk along the Site frontage on High Street extending across the adjacent property to the south owned by Joseph and Paul Gerver. This is the preferred sidewalk location because High Street is a narrow, heavily traveled road with significant public shade trees in

the right of way. However, it would require a public sidewalk easement from the Garvers if existing trees along High Street were to be preserved. The Board appreciates the Applicant's and the Garvers' efforts to find an acceptable sidewalk location, and hopes that any remaining details can be agreed upon to both sides' satisfaction. The Board is offering hereby its assistance, to the extent that it is wanted or needed.

- 2.13 Chapter J of the Town of Acton Bylaws lists High Street as a Scenic Road. Public shade tree removals and the alterations of stone walls within High Street require a public hearing.
- 2.14 The Plan shows a 20-foot wide access and utility easement from Dunham Lane over lot 8 to the adjacent property of Edward J. Sibel. At the preliminary plan stage of this subdivision, the Board also reviewed a preliminary subdivision plan for the Sibel property, and had suggested to both proponents that the two subdivisions be connected to reduce intersections on High Street. The proposed easement appears to be an adequate provision for access to the Sibel property.
- 2.15 The Board has received comments from various Town departments and other correspondence, which are listed in Exhibits 1.4 through 1.6 above. The Board considered them in its deliberations, made available to the Applicant, and incorporated them into this decision as the Board deemed appropriate.
- 2.16 The Applicant has requested certain waivers from the Subdivision Rules. These are discussed in section '3.1 Waivers' below.
- 2.17 The Plan as amended herein and the proposed uses as approved herein are appropriate for the Site; consistent with the Master Plan; in harmony with the purpose and intent of the Bylaw, specifically Sections 4.2 and 4.4; and comply in all respects to the applicable requirements of the Bylaw, and the Special Permit and Subdivision Rules. They enhance the purpose and intent of Open Space Development (OSD); provide affordable housing consistent with the intent of section 4.4 of the Bylaw; protect groundwater resources by preserving most of Zone 2 on the Site in its natural condition; are in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhoods; and will therefore not be detrimental or injurious to the neighborhood.

3 BOARD ACTION

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted to APPROVE the definitive subdivision Plan and to GRANT the requested special permits for an Open Space Development and a Minor Affordable Housing Development.

3.1 WAIVERS

- 3.1.1. The Applicant has requested a waiver from section 4.4 of the Open Space Development Special Permit Rules, which requires the submission of architectural plans for the affordable unit. The waiver is GRANTED because the dwelling unit already exists. However, the unit shall be renovated in accordance with the terms of this decision.
- 3.1.2. Although not requested, the Board grants a waiver from section 9.6.1 of the Subdivision Rules, which requires a sidewalk on Dunham Lane. However, the Applicant shall make provisions for sidewalks as further specified in this decision.

3.2 PLAN MODIFICATIONS

The Plan shall be revised prior to its endorsement to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the

approval of the Board or its designee. Where approvals are required from persons or agencies other than the Board, the Applicant shall be responsible for providing evidence of such approvals to the Board or its designee.

- 3.2.1 At the south end, connect the High Street sidewalk to the edge of the street pavement (sheets SW-1, CP-1, EC-1, and LS-1).
- 3.2.2 Near the north end where the High Street sidewalk is adjacent to the street pavement edge, specify curbing on sheet SW-1 per the cape cod berm detail on sheet DS-1.
- 3.2.3 On sheet PL-1, add "to be removed" to the notes that identify the existing septic systems on lots 3 and 8.
- 3.2.4 Note 8 on sheet PL-1 shall be revised to: "This plan is subject to a subdivision approval and open space/minor affordable housing development special permit (zoning bylaw section 4.2 and 4.4) issued by the Planning Board on April 11, 2001, to be recorded herewith."
- 3.2.5 Note 9 on sheet PL-1 shall be revised to read: "Lot 2 contains the affordable dwelling unit in accordance with section 4.4 of the zoning bylaw."
- 3.2.6 On sheet SW-1, add a Planning Board signature block.
- 3.2.7 On sheet CP-1, clearly identify by legend or otherwise the existing limits of clearing on the common land to remain unchanged, and the proposed new limits of clearing on the common land.
- 3.2.8 All aspects of the Plan related to the connection into the public sewer system shall be modified as may be required by the Sewer Commission or its designee.
- 3.2.9 Provide a detail for the force mains in the single conduit and reference the detail in the note on sheet PP-1.
- 3.2.10 Revise note 32 on sheet CP-1 to specify a thrust block and a "blow-off" valve in accordance with Acton Water District specifications. On the detail sheets add details for these items and refer to the details in note 32.
- 3.2.11 Submit for the Board's or its designee's approval the proposed easement document for the access and utility easement to the Sibel property. The easement shall allow for the construction and use of a driveway and utilities to serve up to three lots or dwelling units.
- 3.2.12 The Plan shall be modified to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Plan shall also be modified to comply with all requirements of the Special Permit and Subdivision Rules, and to address all departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

3.3 CONDITIONS

The following conditions shall be binding upon the Applicant and its successors and assigns. Failure to adhere to the following conditions shall be reason to rescind this subdivision approval pursuant to MGL Ch.41, S.81-W. Further, failure to adhere to these conditions shall render the special permits granted herein null and void, without force and effect, and shall constitute grounds for the revocation of these special permits, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with these special permits using any and all powers available to it under the law.

- 3.3.1 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that results in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such

runoff or erosion occurs, the Board or the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

3.3.2 If the maximum number of dwelling units that may be served by public sewers remains limited to five, lots 2, 5, and 6, and any two other lots shall be connected to the public sewer system.

3.3.3 If the Sewer Commissioners allow additional lots on the Site shall be connect to the public sewer system. This condition 3.3.3 shall not apply to any lot where construction has progressed to a point when the Board of Health has approved for installation an on-site septic system.

3.3.4 The Applicant shall make repairs and correct deficiencies on the existing house on lot 2, designated as the affordable unit, identified during a preliminary inspection by a representative of the Acton Community Housing Corporation (ACHC) as follows:

- Install new aluminum seamless gutters, and new downspouts in front and back.
- Repair all soffit and fascia damage.
- Repair all sills as necessary.
- Replace all existing clapboard with cedar shingles and apply solid stain to match existing shingles; or install new siding on the entire house with materials consistent in appearance (but not necessarily color) with those used for the other homes on the Site.
- Inspect the roof. If damaged or older than 10 years, replace it or overlay it with new shingles.
- Repair and paint bulkhead and stairs.
- Check windows and doors and repair as needed for proper operation.
- Remove the underground oil tank.
- Replace furnace with new, efficient gas or oil furnace.
- Connect domestic water lines to the Acton Water District supply, provided that one of the following occurs:
 - The Acton Water District waives the water hookup fee;
 - The Town of Acton subsidizes the water hookup fee from available affordable housing funds; or
 - The Massachusetts Department of Housing and Community Development (DHCD) approves a sales price for the affordable unit substantially above \$94,500 to offset the cost of the water hookup and the tie-in fee, up to a maximum price of \$105,000.
- Replace power supply with new 100 amp. circuit breaker service.
- Replace kitchen floor.
- Update and repair bathroom as needed.
- Remove all carpets in living room, dining room, and foyer and refinish hardwood floors.
- Repaint all painted surfaces and trim (de-lead if necessary).

3.3.5 In addition, prior to offering it for sale, the designated affordable unit on lot 2 shall be inspected by an independent home and lead inspector at the Applicant's expense. The Applicant shall repair all damage and correct all deficiencies that the inspector may identify in addition to the items listed under 3.3.4 above, and shall de-lead the property if lead paint is found.

- 3.3.6 The designated affordable unit shall be offered to qualified low or moderate-income first time homebuyers. Sales price, deed, deed restrictions, and all other documents and procedures shall comply with the DHCD's Local Initiative Program (LIP).
- 3.3.7 If permitted by DHCD, the affordable unit shall be marketed under ACHC's local preference guidelines. It would give priority to persons employed by the Town of Acton, the Acton-Boxborough Regional School District, the Acton Water District, and other employees working in Acton; to current Acton residents; and to children of current Acton residents.
- 3.3.8 The Applicant shall bear the cost of marketing the designated affordable unit, including the cost of the lottery that may be necessary to select from a pool of qualified homebuyers.
- 3.3.9 Before the issuance of the 10th building permit for new construction on the Site, the designated affordable unit shall be certified as ready for occupancy by the Building Inspector and the unit shall be certified by the ACHC as a suitable LIP unit.
- 3.3.10 Throughout the process of renovating, marketing, and selling the designated affordable unit, the Applicant shall consult with and seek guidance from the ACHC, which is the designated facilitator of affordable housing in Acton.
- 3.3.11 The sidewalk along High Street shall be constructed as shown on Plan sheet SW-1 as modified herein. The sidewalk easement on the Garvers' property shall be offered to the Town for acceptance before or concurrently with the acceptance of Dunham Lane as public way. If the Applicant and the Garvers are unable to agree to specific terms of the sidewalk easement and construction, the Board will consider possible alternatives that the Applicant may propose at that time. They may include in the order of the Board's preference:
- Constructing the sidewalk within the High Street layout. This option would mean the loss of public shade trees and would require a Town subsidy from existing dedicated sidewalk funds or a contribution of Town labor. The applicant has committed up to \$10,750 to this option, should it become the option of choice. The stated amount shall be the Applicants maximum obligation under this option.
 - Accepting a minimum \$8,265 sidewalk contribution for generally advancing sidewalks in Acton (551 linear feet on Dunham Lane multiplied with \$15/foot).
 - Constructing the sidewalk in Dunham Lane.
- 3.3.12 The "No Cut Zone" on lots 9 and 10 shall not be enforceable by the Board or the Town of Acton.
- 3.3.13 The deeds for lots 5 and 6 shall contain a restriction that prohibits the application of lawn pesticides and fertilizers, except for lime and dry lawn fertilizers derived from manure or other organic waste.
- 3.3.14 The common land shall remain in its natural state except for the improvements shown on the Plan. The common land and all limits of clearing on it shall be staked before the beginning of any construction activity. All limits of clearing on the common land shall be strictly maintained during construction and thereafter.
- 3.3.15 The common land shall be offered to the Town for acceptance before or concurrently with the acceptance of Dunham Lane as a public way. Its primary purpose shall be for passive recreation and watershed protection. Except for the improvements shown on the Plan, the common land shall remain restricted by deed or otherwise to passive recreation, trail development, general maintenance, and selective tree cutting for purposes of maintaining trails, reducing hazards, or enhancing the health of the forest. No area of the common land shall be used for active recreation or be paved for vehicular parking or other purposes.
- 3.3.16 All work on the Site shall comply with the requirements of the Board of Health.

- 3.3.17 All taxes, and penalties and back charges resulting from the non-payment of taxes, shall be paid in full before endorsement of the Plan.
- 3.3.18 Prior to endorsement of the Plan and the issuance of any building permit on the Site, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Subdivision Rules. The Board reserves the right to require additional performance guarantees for any and all items and improvements shown on the Plan to be posted as a passbook in a form acceptable to the Town of Acton Treasurer.
- 3.3.19 No work on the Site shall begin before the endorsement and recording of the Plan.
- 3.3.20 All work on the Site shall be conducted in accordance with the terms of this subdivision and special permit approval and shall conform with and be limited to the improvements shown on the endorsed Plan.
- 3.3.21 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 3.3.22 All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.
- 3.3.23 Until the Town of Acton accepts the streets as public ways, the Applicant, not the new homeowners, shall be responsible for plowing and maintenance of Dunham Lane.
- 3.3.24 Following acceptance of the streets, the Town's maintenance responsibilities will follow standard procedures for Town streets and ways and shall be limited to the improvements located within the street layouts and associated with their function as a street, and to any improvements associated with street drainage located within designated utility easements. The maintenance of all private utilities and services located within or outside the street layout or said easements and of any private drainage facilities feeding into drainage structures within the street layouts or easements shall not be the responsibility of the Town.
- 3.3.25 This Decision, the endorsed Record Plan, the access and utility easement to the Sibel property, and the Restrictive Covenant if any, shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit for new construction on the Site.

3.4 LIMITATIONS

The authority granted to the Applicant under this decision is limited as follows:

- 3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw, the Special Permit Rules, the Subdivision Rules, and other applicable laws and regulations.
- 3.4.2 This special permit and subdivision approval applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.4.4 This subdivision approval shall expire if not endorsed on the Plan within 1 year from the date of filing this decision with the Town Clerk. It shall also expire, if street construction and installation of services is not completed within 8 years from the date that this decision has been filed with the Town Clerk. A request to extend said time limits must be made in writing to the Board at least 30 days before said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to this decision and to require any appropriate modifications of the Plan.

- 3.4.5 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For substantial use to have commenced, clearing and grading of the street as approved hereunder must be under way. For construction to continue towards completion in a continuous and expeditious manner, construction shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days before said expiration dates. The Board reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.
- 3.4.6 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this decision with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §. 17 or MGL, Ch. 41, §. 81-BB and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

5 CERTIFICATE OF ACTION

This document stating the Decision of the Board shall serve as the Certificate of the Board's Action to be filed with the Town Clerk pursuant to MGL, Ch. 41, §. 81-U.

Signed on behalf of the Acton Planning Board


 Roland Bartl, AICP, Town Planner
 for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Catherine Belbin, Town Clerk

Date

Copies furnished:

Applicant - certified mail #2013962978
 Engineering Administrator
 Conservation Administrator
 Police Chief
 Historical Commission
 Building Commissioner
 Municipal Properties Director
 Town Manager
 Acton Water District
 Assistant Assessor

Health Director
 Town Clerk
 Fire Chief
 Owner

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